

## **Chapter 12 — Denials, Terminations, and Appeals**

### **Application Denials**

We will deny your application and may terminate your CNP Contract if we determine at any time that you:

- are ineligible to participate in the CACFP;
- are unable to properly operate the program;
- have defrauded the program;
- failed to complete a corrective action, as detailed in a corrective action plan;
- permitted a member of your governing body, an agent, a consultant, or an employee who has been convicted of a fraudulent activity to engage in any activity related to the administration of the CACFP;
- have been determined to be seriously deficient in the ability to comply with program requirements in any other Child Nutrition Program;
- sponsor the participation of a provider who was terminated for cause or declared seriously deficient and placed on the list of excluded providers;
- have an outstanding or unresolved single audit;
- failed to submit a complete and correct application within the specified time;
- failed to meet basic eligibility requirements;
- did not comply with applicable bid procedures;
- failed to maintain required records;
- claimed reimbursement for meals that were not served to participating children;
- did not disburse payment to your providers according to your management plan;
- claimed reimbursement for meals that did not meet program meal pattern requirements;
- failed to submit a balanced and reasonable budget; or
- claimed reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the CACFP (concurrent participation).

If your application is denied, we will notify you, in writing, of the specific reason for denial. You have the right to appeal any decision we make that adversely affects your participation in the program.

### **Terminations and Participation Limits**

The CNP Contract may be terminated in whole or in part. A termination "in part" applies to situations where you participate in more than one program and withdraw from or are determined to be ineligible for at least one but not all of the programs.

Exception: If you are determined to be ineligible to participate in a program as a result of serious deficiency in the ability to comply with program requirements, your CNP Agreement must be terminated "in whole."

We must terminate your CNP Agreement if we determine that there is cause for termination or if you:

- mutually consent to terminate your agreement;
- are placed on the National Listing of Seriously Deficient Institutions; or
- sponsor a provider that is on the List of Excluded Providers.

### **Sponsor's Failure to Reapply**

If you fail to reapply to participate in the CACFP, your CNP Agreement will be amended or terminated, as appropriate.

### **Termination by Mutual Consent**

IDOE and you may mutually consent to terminate your CNP Agreement at any time. Termination by mutual consent generally occurs as a result of your decision to withdraw from a program and can occur at any time during the program year, including at the time of reapplication.

Note: Termination by mutual consent is not an adverse action. Therefore, you cannot appeal this termination.

### **Termination for Cause**

We may terminate or amend your CNP Agreement if you:

- fail to resolve program noncompliance, as detailed in a corrective action plan;
- been determined to be seriously deficient in the ability to comply with program requirements in the CACFP or Summer Food Service Program;
- submit falsified documents or fraudulent billings;
- fail to provide services specified in your CNP Contract;
- sponsor the participation of a provider who was terminated for cause or declared seriously deficient and placed on the List of Terminated Providers;
- permitted a member of your governing body, an agent, a consultant, or an employee who has been convicted of a fraudulent activity to engage in any activity related to the administration of the CACFP;
- failed to submit a complete and correct application within the specified time;
- failed to meet basic eligibility requirements;
- did not comply with applicable bid procedures;
- failed to return an advance payment that exceeds the amount earned for serving approved meals, a disallowed start-up payment, or an unearned reimbursement;
- failed to maintain required records;

- claimed reimbursement for meals that were not served to participating children;
- did not disburse payment to your providers according to your management plan;
- claimed reimbursement for meals that did not meet program meal pattern requirements;
- failed to submit a balanced and reasonable budget; or
- claimed reimbursement from multiple programs for the same meal served to the same child or claimed a child more than once per individual meal in the CACFP (concurrent participation).

Before terminating an agreement for cause, IDOE will consider:

- the severity of the noncompliance;
- the reason for the noncompliance;
- your efforts to correct the noncompliance; and
- whether providing or arranging additional training or technical assistance would help you to correct the problem.

If your CNP Agreement is terminated, we will notify you, in writing, of the specific reason for termination. You have the right to appeal any decision we make that adversely affects your participation in the program.

### **Denial and Termination of Providers**

Providers who have been terminated for cause and declared seriously deficient or disqualified from participation in the CACFP and included on the National Disqualified List are ineligible to participate in the CACFP. The State Agency maintains the List of Terminated Providers.

The Sponsor/Provider Agreement defines the relationship between you and a provider. If one of your providers is seriously deficient in their ability to comply with program requirements, you are responsible for declaring them seriously deficient and terminating their participation in CACFP. Cause for these actions includes program abuse, deficient program operation, and fraudulent activities. Examples of serious deficiencies include, but are not limited, to:

- failing to comply with the requirements specified in the Sponsor/Provider Agreement;
- submitting false information to you or IDOE;
- failing to maintain records as required;
- submitting claims for reimbursement for meals that were not served to program participants; and
- serving a significant number of meals that do not contain all required meal components in the required quantities.

If you declare a provider seriously deficient, you must submit a copy of the Seriously Deficient Notice, the Notice to Temporarily Defer the Serious Deficiency OR the Intent

to Terminate and Disqualify Letter, and, if necessary, the Termination Letter to the State Agency. The State Agency requires the use of USDA PROTO-TYPE LETTERS.

A serious deficiency is not appealable action; however, you must give appeal rights to the provider with the Intent to Terminate and Disqualify Letter.

If the provider appeals your decision and your decision is upheld in the appeal hearing, submit this information to the State Agency within five days of receiving the decision from the appeal hearing. If the provider does not appeal your decision to terminate their participation, you will send a Termination Letter to them and submit a referral for inclusion on the List of Terminated Providers to SCNP.

A provider will remain on the List of Terminated Providers for seven years. A provider may request the removal from the list by submitting the following information to the State Agency:

- a statement requesting that the provider be removed from the list;
- an explanation of why the provider should be allowed to participate in the program again;
- a description of the actions that the provider has taken to correct the serious deficiency; and
- a description of the actions that the provider and you will take to ensure that the serious deficiency does not recur.

We will notify the provider of our decision. When providers are added to or removed from the List of Terminated Providers, we will distribute an updated version to all family day care home sponsors.

### **Removal from the National Disqualified List**

To be considered for removal from the NDL prior to the seven year regulatory timeframe, an institution, responsible principal(s) and/or responsible individual(s) or family day care home provider(s) must have been **on the NDL for a minimum of 36 months** and submit documentation to the proper agency:

Who is on the NDL	Submit documentation to:
Institution (has contract with IDOE)	State Agency
Institution's Responsible Principal or Responsible Individual (RP/RI)	State Agency
Unaffiliated Sponsored Center (has an agreement with a sponsor)	Sponsoring Organization
Unaffiliated Sponsored Center Responsible Principal or Responsible Individual	Sponsoring Organization
Family Day Care Home Provider	Sponsoring Organization

To be considered for removal from the NDL prior to the seven year regulatory timeframe, the institution, unaffiliated sponsored center, or family day care home provider must submit:

1. A letter requesting that the organization, responsible principal and/or responsible individual or family day care home provider be removed from the NDL
2. Corrective action that includes:
  - **An acceptable corrective action plan (CAP):** The institution, responsible principal and/or responsible individual or family day care provider must submit an acceptable CAP outlining how the deficiencies that caused the institution, responsible principal and/or responsible individual or family day care provider to be placed on the NDL have been or will be corrected. The CAP must demonstrate that full and permanent corrective action has been implemented to resolve the serious deficiencies that caused the termination. If the State Agency or the Sponsoring Organization rejects the requestor's CAP, the institution, responsible principal and/or responsible individual or family day care home provider may **not** appeal this decision.
  - **Any outstanding audits:** If the institution's serious deficiencies included failure to submit an acceptable audit, an audit that is in compliance with the Single Audit Act standards that were in effect at the time the audit was originally due must be submitted. Corrective action must also include a plan to address any deficiencies identified in the audit.
  - **All outstanding funds owed:** If the institution or family day care home provider owes funds because of a previous CACFP claim, amended claim or audit finding, the outstanding funds must be repaid.
  - **A written explanation or statement that addresses the following:**

<b>If the person or persons identified as being responsible for the serious deficiencies are ...</b>	<b>Then the institution, responsible principal and/or responsible individual or family day care home provider will need to provide FND...</b>
Still a part of the organization and involved with the operation or administration of the CACFP,	An explanation of why the person or persons identified as being responsible for the serious deficiencies should now be eligible to participate in the CACFP.
Still part of the organization, but will <b>not</b> be involved with the operation or administration of the CACFP,	A statement that the person or persons identified as being responsible for the serious deficiencies will not be involved in the operation or administration of the CACFP.
No longer employed by the organization,	A statement that the person or persons identified as being responsible for the serious deficiencies is/are no longer employed by the organization.

Acceptable Corrective Action: When the State Agency or the Sponsoring Organization determines the institution, responsible principal and/or responsible individual of family day care home provider has taken acceptable corrective action, the State Agency or Sponsoring Organization will forward an assessment as follows:

Who submits the Corrective Action Plan (CAP)	Who Reviews CAP and Forwards for Consultation	Who Makes the Final Determination*
Institution	State Agency; Midwest Regional Office	USDA
Institution RP/RI	State Agency; Midwest Regional Office	USDA
Unaffiliated Sponsored Center	Sponsoring Organization & State Agency; Midwest Regional Office	USDA
Unaffiliated Sponsored Center RP/RI	Sponsoring Organization & State Agency; Midwest Regional Office	USDA
Family Day Care Home Provider	Sponsoring Organization & State Agency; Midwest Regional Office	USDA

\*Final determination regarding removal from NDL.

The State Agency will notify the institution, responsible principal and/or responsible individual of the USDA's decision. Sponsoring Organizations will notify unaffiliated centers, unaffiliated responsible principals and/or responsible individual, or family day care home provider of the USDA's decision.

If USDA determines that the institution, responsible principal and/or responsible individual will be removed from the NDL, the institution **may apply** (attend new sponsor training, submit required documents, and pass a performance evaluation) for participation in the CACFP and the responsible principal and/or responsible individual may perform CACFP duties. If USDA decides to retain the institution, responsible principal and/or responsible individual on the NDL, the decision may **not** be appealed and the institution, as well as the persons identified as responsible for the serious deficiencies, will continue to be ineligible to participate in the CACFP.

If the USDA determines that the unaffiliated center, unaffiliated center's responsible principal and/or responsible individual or family day care home provider will be removed from the NDL, the unaffiliated center or family day care home provider **may apply** (must receive new facility training from Sponsor) for participation in the CACFP and the responsible principal and/or responsible individual may perform CACFP duties. The sponsoring organization that declared the unaffiliated center or family day care home provider to be seriously deficient and placed on the NDL is NOT required to take on the

unaffiliated center or family day care home provider. If the USDA decides to retain the unaffiliated center, responsible principal and/or responsible individual or family day care home provider on the NDL, the decision may **not** be appealed and the institution, as well as the persons identified as responsible for the serious deficiencies, will continue to be ineligible to participate in the CACFP.

USDA's Headquarters has the final say as to the removal of any institution, family day care home provider, sponsored center, and responsible principles and responsible individuals from the National Disqualified List. In addition, Sponsoring Organizations, State Agencies, the Midwest Regional Office and USDA are NOT required to process requests for removal from the National Disqualified List.

### **Appeals**

#### **Actions Subject to Appeal by a CACFP Institution**

You have the right to appeal any decision we make that adversely affects your participation in the program, including:

- denial of an application for program participation or start-up payment;
- termination of your CNP Contract or the participation of one of your providers;
- denial or suspension of all or part of a program payment;
- IDOE's refusal to forward, to USDA for their consideration, a denied late claim or a request for an upward adjustment to a claim; and
- demands for the remittance or settlement of overpayment.

#### **Appeal Process**

You have the right to appeal any decision we make that affects your participation in the program, by **written request** to:

Director  
School and Community Nutrition  
Indiana Department of Education  
115 West Washington Street  
South Tower, Suite 600  
Indianapolis IN 46204

The State Agency must receive your request for appeal within 15 days after your receipt of notification of the adverse action.

Your request will be forwarded to the Indiana Department of Education, Legal Division, and the Hearing Officer will contact you regarding the appeal process.

Please refer to APPEAL PROCEDURES FOR THE STATE OF INDIANA at the end of this chapter.

### **Actions Subject to Appeal by a Provider**

Providers have the right to appeal any decision that you make which adversely affects their participation in the program, including:

- denial of participation;
- denial of a provider's reimbursement claim for meals;
- denial of a resident child's eligibility to participate in the CACFP;
- denial of Tier I reimbursement status;
- referral to include the provider on the List of Terminated Providers;
- termination of the provider's participation.

### **Appeal Process for Providers**

You must establish appeal procedures for providers' disputes and supply the procedures to a provider when you enroll them in the CACFP and make a decision (an adverse action) that adversely affects their participation in the program.

Note: An adverse action is any action that denies or reduces program benefits to the provider.

Your appeal procedures must include the following elements:

- You will designate an independent and impartial appeals official.
- You must notify a provider, in writing, of the reasons for the adverse action.
- You must send one copy of each adverse action notification by United States Postal Service (USPS) certified mail, return receipt requested, and a second copy (recommended) of the notification by regular mail, i.e., standard USPS first-class mail. You must advise the provider that they have the right to appeal the action and include a copy of your organization's appeal process.
- If the provider accepts the certified notification and wishes to appeal, the provider must follow your organization's appeal process.

Once you notify a provider of an adverse action, you must allow the provider to review the materials upon which your action was based.

When ruling on an appeal, the appeals official must consider your testimony and that of the provider, written documentation that they received, and state and federal regulations governing the program.

Your decision remains effective throughout the appeal process. However, the provider can continue to participate while appealing a termination, unless the termination was based on an imminent threat to the health or welfare of program participants.

If your decision is reversed and you need to file an amended claim with IDOE in order to pay the provider any reimbursement to which he is entitled, you should submit the



amended claim to IDOE within 15 calendar days of notification of the reversal. You must pay the provider within five workdays of receiving payment from IDOE.

If your decision is upheld, the effective date of termination is the date the hearing officer made the decision.

The decision of the hearing official is the final administrative determination to be afforded the provider.

### **Appeal Procedures**

The following appeal procedures established in accordance with Section 226.6(k) of the Child and Adult Care Food Program regulations will be followed by an institution requesting a review of a denial of a new or renewing institution's application for participation, a denial of an application submitted by a sponsoring organization on behalf of a facility, a proposed termination of an institution's agreement due to health or safety violations, a proposed disqualification of a responsible principal or responsible individual due to health or safety violations, a suspension of an institution's participation because of health or safety violations or submission of a false or fraudulent claim, a denial of an agency's application for start-up or expansion payments, a denial of all or a part of an institution's claim for reimbursement unless the denial is based on a late claim submission, a decision by the IDOE not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim, a demand for the remittance of an overpayment, and any other action of the IDOE affecting an agency's participation or its claim for reimbursement.

Actions not subject to an administrative review include:

- A FNS decision on claim deadline exceptions and requests for upward adjustments to a claim;
- A determination of seriously deficient;
- A disqualification and placement on State agency list and National disqualified list;
- A termination of a participating institution's agreement;
- State Agency determination that corrective action is inadequate;
- State Agency or FNS decision regarding removal from the National disqualified list; and
- State Agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

Procedure:

- 1) The institution shall be advised in writing of the action being proposed or taken and the basis for the action. The notice will include a statement indicating that the institution has the right to appeal the action. The notice of action shall be sent by certified regular U.S. mail, by facsimile, or by email, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.
- 2) Any written request for review shall be submitted by the appellant and post marked not later than 15 calendar days from the date the appellant received the notice of action.
  - a) In order to be considered, the written request for review must be addressed to: **Director, School and Community Nutrition, Indiana Department of Education, 115 West Washington Street, South Tower, Suite 600, Indianapolis, IN 46204.** The request for review will not be accepted by e-mail or facsimile.

- b) Any request for review must specify who is filing the request. For example, request is filed on behalf of *[institution name]*, and *[Authorized Representative name]* and *[Owner or Board President Name]*.
  - c) Your request for a review must identify any contested issues of fact that you have with the IDOE's determinations. You must identify which facts contained in the notice of action you are disputing and you must identify what evidence you have to dispute those facts. If you fail to specifically dispute any facts, the hearing official may find that you have admitted to the facts.
  - d) If you wish to have an in-person hearing, you must specifically request one in your request for a review. Only if the appellant specifically requests an in-person hearing in the letter of request for review, will the review official hold a hearing in addition to, or in lieu of, a review of written information submitted by the appellant.
- 3) The State will acknowledge the receipt of the request for appeal within 10 calendar days from the date of the department receipt of the request.
- 4) The appellant may refute the charges contained in the notice of action in person and/or by written documentation to the review official.
- a) In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action.
  - b) Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
  - c) A representative of the State Agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.
  - d) The appellant may retain legal counsel or may be represented by another person.
- 5) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice of the time and place of the hearing. Notice may be provided by e-mail.
- 6) Any information on which the State Agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review.
- 7) The review official shall be an independent and impartial official that was not involved in the action that is the subject of the administrative review.
- 8) The review official shall make a determination based on information provided by the State Agency and the appellant and on federal and state laws, regulations, policies and procedures governing the Program.
- 9) Within 60 calendar days of the State Agency's receipt of the request for review, the review official shall inform the State Agency and the appellant of the determination of the review.

10) The State Agency's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination unless the action is based on imminent dangers to the health or welfare of children. If the institution or facility has been terminated for this reason, the State Agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State Agency's action is upheld.

11) The determination by the State review official is the final administrative determination to be afforded to the appellant.

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